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HUSCH BLACKWELL SANDERS LLP 720 OLIVE STREET SUITE 2400 ST. LOUIS, MO 63101			EXAMINER	
			UBER, NATHAN C	
			ART UNIT	PAPER NUMBER
			3622	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

Office Action Summary	Application No.	Applicant(s)	
	10/599,606	LEE ET AL.	
	Examiner	Art Unit	
	NATHAN C. UBER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 November 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,6,7,10,11 and 16-18 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,6,7,10,11 and 16-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Status of Claims

1. This action is in reply to the national stage entry amendment filed on 13 November 2008.
2. Claims 1, 16 and 17 were amended.
3. Claims 4, 5, 8, 9 and 12-15 were canceled.
4. Claims 1-3, 6, 7 and 10, 11 and 16-18 are currently pending and have been examined.

Claim Objections

5. Claim 16 was objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant adequately addressed this objection by amendment, accordingly the objection is withdrawn.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 16 and 17 were rejected under 35 U.S.C. 101 because the claimed invention was directed to non-statutory subject matter. Applicant has adequately addressed these rejections by amendment, accordingly the rejections are withdrawn.
8. Claims 1-3, 6, 7, 10-16 and 18 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 12-15 were canceled and claim 16 was amended rendering the rejections with respect to those claims moot. With regard to claims 1-3, 6, 7, 10, 11 and 18 this rejection is maintained. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S.

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780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 1-3, 6, 7, 10, 11 and 18 fail to meet the above requirements because they are not tied to a second statutory class of invention, accordingly this rejection is maintained.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

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12. Claims 1-3, 6, 7 and 10, 11 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy et al. (U.S. 7,107,226 B1) in view of Cheung et al. (U.S. 7,043,471 B2).

Claims 1 and 16:

Cassidy, as shown, discloses the following limitations:

- *maintaining a goods information database, the goods information database for storing least one search listing, the search listing including seller identification information and selling price information* (see at least column 5, line 42, "database of goods and/or services" see also Figure 7, search results listing good by price and vendor),
- *receiving a search request for goods from a searcher* (see at least column 7, line 37, "buyer can search the database"),
- *providing a search result list of the goods in response to the search request for the goods, the search result list of the goods including the search listings* (see at least Figure 7, an example of search results),
- *in response to the detected click-through, generating and storing selling price information by referring to selling price information included in the search listing selected by the searcher* (see at least column 9, lines 35-36, the order is stored in user's order history),
- *providing an Internet link to a seller of goods associated with one of the provided search listings so that the searcher can purchase the goods at seller's website* (see at least column 9, lines 55, embedded hyperlinks to the vendors' home pages),
- *generating advertising costs for each seller for the first selling period, irrespective of purchase of the goods at the seller's website, based, at least in part, upon a predetermined commission rate and the stored selling price information* (see at least column 7, lines 31-32, commission price generated based on commission rate which is necessarily based on the sale price of the

product, although a commission is awarded when a sale is made, a commission price may be generated “irrespective of purchase of the goods”), Although Cassidy discloses tracking customer order history and remembering shopping cart contents whether or not the customer makes a purchase, Cassidy does not specifically disclose a cost-per-click billing strategy. However, Cheung, as shown, discloses the following limitations:

- *a first advertising costs generating module, the first advertising costs generating module generating advertising costs for each seller for the first selling period, irrespective of purchase of the goods at the seller's website, based, at least in part, upon the click selection information* (see at least column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click),
- *detecting a click-through to the Internet link by the searcher* (see at least column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term),

Cassidy discloses charging advertisers based on a commission rate based on sales. Cheung discloses charging advertiser based on a cost-per-click method and discloses predicting based on a previous payment period future advertising charges. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention combine the features of Cheung with the invention of Cassidy to provide alternative charging methods for advertisers and to predict advertising costs for advertisers since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 2:

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Cassidy discloses the limitations as shown in the rejection above. Further, Cassidy, as shown, discloses the following limitations:

- *storing the detected click-through information of the selected search listing for each seller during the first predetermined period* (see at least column 9, lines 51-52, “a direct transactional link is established between the product supplier and the purchaser,” the system records this for order/billing, but also for compensating the system a commission on the sale),

Although Cassidy discloses tracking customer order history and remembering shopping cart contents whether or not the customer makes a purchase, Cassidy does not specifically disclose a cost-per-click billing strategy. However, Cheung, as shown, discloses the following limitations:

- *generating cost-per-click information in accordance with a predetermined unit click cost and the detected click-through information* (see at least column 23, lines 31-32),
- *providing estimated advertising costs for each seller with respect to a second selling period, based on the advertising costs of selling price and the cost-per-click information* (see at least column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click),

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the cost-per-click and click monitoring/counting method of Cheung with the online shopping system of Cassidy because Cassidy’s method provides “an advertising and promotional forum” (Cassidy column 9, line 54) and cost-per-click is an old and well known method of charging advertisers for advertising exposure in an advertising and promotional forum. The claimed invention therefore is merely a combination of old elements, and in the combination each element merely would have

performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 3:

The combination Cassidy/Cheung discloses the limitations as shown in the rejection above.

- *comparing the advertising costs of selling price (see at least Cassidy column 7, lines 31-32, commission price generated based on commission rate and sales generated) with the cost-per-click (see at least Cheung column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click) information and selecting a smaller value between the advertising costs of selling price and the cost-per-click information for the estimated advertising costs,*

It would have been obvious to one having ordinary skill in the art at the time of the invention to compare the two generated advertising costs and select the lower or higher cost to charge the advertiser because simply choosing to charge a lower or higher cost is a business decision that does not patentably affect the scope of the claims and because Cheung teaches that “advertisers generally want to maximize results and minimize costs” (Cheung column 3, lines 62-63). Generally charging a lower advertising cost will entice advertisers to continue their patronage, alternatively charging a higher cost will increase income. Regardless of basis for choosing the advertising cost to charge, one having ordinary skill in the art at the time of the invention could have chosen to charge the higher or lower cost and would have recognized that the results of the combination were predictable.

Claim 6:

The combination Cassidy/Cheung discloses the limitations as shown in the rejection above. Further Cheung, as shown, discloses the following limitations:

- *receiving predetermined deposit from a seller for advertising before the first predetermined period starts (see at least column 19, line 7, prepaid account),*
- *providing the seller with outstanding balance information, the outstanding balance information being calculated by subtracting the predetermined deposit from the advertising costs for the second predetermined period (see at least column 13, lines 25-29),*
- *charging the seller's account with advertising costs for the second predetermined period based upon the estimated advertising costs (see at least column 15, line s 1-3, prepay accounts charged a predetermined amount, see also column 23, line 23, predicting future expenses based on previous advertising costs i.e. deriving the predetermined amount),*

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the advertising accounting method of Cheung with the online shopping system of Cassidy because Cassidy's method provides "an advertising and promotional forum" (Cassidy column 9, line 54) and Cheung discloses improved methods for monitoring an advertiser's account on an advertising forum. The claimed invention therefore is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 7:

The combination Cassidy/Cheung discloses the limitations as shown in the rejection above. Further Cheung, as shown, discloses the following limitations:

- *receiving predetermined deposit from a seller for advertising before the first predetermined period starts (see at least column 14, lines 61-63, a fixed prepay deposit payment plan),*
- *in case that a request for termination of advertising is received from the seller within the first selling period, charging the seller's account with the received*

deposit for the first predetermined period (see at least column 15, line s 1-3, prepay accounts charged a predetermined amount),

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the advertising accounting method of Cheung with the online shopping system of Cassidy because Cassidy's method provides "an advertising and promotional forum" (Cassidy column 9, line 54) and Cheung discloses improved methods for monitoring an advertiser's account on an advertising forum. The claimed invention therefore is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 10:

Cassidy, as shown, discloses the following limitations:

- *maintaining a user information database, the user information database for storing basic personal information on a plurality of searchers (see at least column 8, lines 29-36, user personal information is stored as registration information),*
- *in response to a predetermined login request received from the searcher, authenticating the searcher by referring to the user information database (see at least Figure 2, login and authentication),*
- *in response to the received click selection, generating detailed search information on goods associated with the selected search listing and storing the same in the user information database (see at least column 14, lines 35-37, the shopping cart maybe retained in the database whether or not the user proceeds to checkout and buys its contents, see also column 15, lines 35 saving a shopping cart as a template).*

Claim 11:

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Cassidy discloses the limitations as shown in the rejection above. Further, Cassidy, as shown, discloses the following limitation:

- *generating advertising costs of selling price with respect to each of the sellers, by applying at least one different exemplary selling commission rate to total selling price with respect to each of the sellers during a predetermined period (see at least column 7, lines 31-32, commission price generated based on commission rate and sales generated),*

Cassidy does not specifically disclose deriving a commission rate based on generated cost-per-click information that is closest to the cost-per-click rate. However, Cheung, as shown discloses calculating cost-per-click information:

- *wherein the selling commission rate is determined to be the applied exemplary selling commission rate when the total amount of the advertising costs of selling price with respect to the plurality of sellers during the predetermined period is nearest to the total amount of the cost-per-click information with respect to the plurality of sellers during the predetermined period (see at least Cheung column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click),*

It would have been obvious to one having ordinary skill in the art at the time of the invention to compare the two generated advertising costs and identify an exemplary commission rate that best reflects the cost-per-click costs because the two cost calculations (commission and cost-per-click) represent the value of the same advertising opportunity and therefore should be equal; if they are not equal then the commission rate is either under- or over-valuing the advertisement. Simply evaluating the variation between cost strategies for valuing advertisements is common business practice in the art.

Claim 18:

Cassidy, as shown, discloses the following limitations:

- *sorting the at least one search listing in accordance with a predetermined criterion base on selling price information of the search listing* (see at least Figure 7, search results are sorted by price - least expensive item first).

Claim 17:

Cassidy, as shown, discloses the following limitations:

- *a processor* (see at least column 6, line 12, computer hardware),
- *one or more memories to communicate with the processor, the one or more memories storing a goods information database, the goods information database storing a search listing including seller identification information and selling price information* (see at least column 5, line 42, "database of goods and/or services" see also Figure 7, search results listing good by price and vendor),
- *an interface, the interface receiving a search request for goods including a keyword from a searcher and providing an Internet link to a seller of goods associated with one of the provided search listings so that the searcher can purchase the goods at the seller's website* (see at least Figure 7, an example of search results, see also at least column 9, lines 55, embedded hyperlinks to the vendors' home pages),
- *a list generating module, in response to the search request for goods, the list generating module abstracting at least one search listing associated with the keyword from the goods information database, the list generating module generating a list of search results of goods and transmitting the same to the searcher* (see at least Figure 7, an example of search results),
- *a record control module, in response to the received click selection of the searcher selecting any one search listing among the list of search results of*

goods, the record control module generating and storing click selection information and total selling price information with respect to a first selling period for each seller (see at least Figure 19b, an example shopping cart),

- *a first advertising costs generating module, the first advertising costs generating module generating advertising costs for each seller for the first selling period, irrespective of purchase of the goods at the seller's website, based, at least in part, upon the selling price information and a predetermined commission rate (see at least column 7, lines 31-32, commission price generated based on commission rate and sales generated),*

Although Cassidy discloses tracking customer order history and remembering shopping cart contents whether or not the customer makes a purchase, Cassidy does not specifically disclose a cost-per-click billing strategy. However, Cheung, as shown, discloses the following limitations:

- *a first advertising costs generating module, the first advertising costs generating module generating advertising costs for each seller for the first selling period, irrespective of purchase of the goods at the seller's website, based, at least in part, upon the click selection information (see at least column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click),*
- *a second advertising costs generating module, the second advertising costs generating module generating estimated advertising costs information with respect to a second selling period, based on the generated advertising costs and click selection information (see at least column 23, lines 36-45, numbers of clicks are tracked over time to generate an estimated number of clicks for*

a given search term, this is multiplied by the cost bid for the search term to generate an estimated cost-per-click),

Cassidy discloses charging advertisers based on a commission rate based on sales. Cheung discloses charging advertiser based on a cost-per-click method and discloses predicting based on a previous payment period future advertising charges. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention combine the features of Cheung with the invention of Cassidy to provide alternative charging methods for advertisers and to predict advertising costs for advertisers since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Response to Arguments

13. Applicant's arguments filed 13 November 2008 have been fully considered but they are not persuasive. Applicant first presents arguments in an attempt to traverse the 101 rejections for claims 1-3, 6, 7, 10-16 and 18. Applicant's argument with respect to claim 16 is noted, but Applicant's amendment was instrumental in removing the 101 rejection for claim 16 as noted above. Applicant fails to present an argument directed to her remaining claims. Accordingly the argument is not persuasive. The rejection is neither traversed by argument nor by amendment as Applicant's amendments did not adequately address the deficiencies of the claims under 35 U.S.C. 101 as noted above.
14. With regard to the 102 rejections, Applicant's amendments narrowing the "click-through" feature in the claims and additionally generating advertising costs based on "click-through" when no sale is made changed the scope of the claim. The 102 rejections are moot in light of the new grounds of rejection presented above.

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15. With regard to the rejections above, Applicant presented several arguments averring that several limitations were not taught by the combination of references above. On page 15 of Applicant's remarks Applicant argues that "the direct link does not direct the customer to the supplier's website for placing an order." Applicant is referring to the link disclosed by Cassidy in column 9, lines 49-60. Examiner directs Applicant's attention to column 9, lines 54-55, "vendor therefore has an advertising and promotional forum, and hyperlinks may be embedded in the system for the vendors' home pages or other Web sites." Cassidy make no representation, requirement, or limitation about the purpose a user may have for following the link. Regardless, the functionality claimed in the claim language is taught by this reference.
16. Applicant's additional arguments and assertions related to the new claim limitations which were addressed in the rejection above. Applicant's argument that the general or stated purpose of the Cassidy invention is different from Applicant's invention (see at least page 15) is not persuasive. The rejections cited above are directed to the claim language not limitations which may be present in the specification. Examiner is required under MPEP §2111 to apply the broadest reasonable interpretation to the claim language. Although the Cassidy invention includes additional features that are not present in Applicant's invention, Cassidy nevertheless discloses the claimed features of Applicant's invention as shown in the rejections above.

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Conclusion

17. Examiner's prior rejections are maintained in this Office action except where Applicant's amendment necessitated a new/modified rejection. Further Applicant's arguments were addressed above. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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19. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
21. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

22. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

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/Nathan C Uber/ Examiner, Art Unit 3622
2 February 2009

/Arthur Duran/
Primary Examiner, Art Unit 3622